

IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF SOUTH CAROLINA  
FLORENCE DIVISION

Javan Moore,	)	C/A No. 4:12-756-MBS-TER
	)	
Plaintiff,	)	
	)	
vs.	)	<b><u>ORDER AND OPINION</u></b>
	)	
Nurse Susan Blackwell; Frank T. Osrecher	)	
(Spartanburg City Public Safety Officer);	)	
Spartanburg Detention Center,	)	
	)	
Defendants.	)	
	)	

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Javan Moore (“Plaintiff”), a detainee at the Spartanburg County Detention Center in Spartanburg, South Carolina, filed the within pro se action on March 16, 2012, against Susan Blackwell (“Blackwell”), Frank T. Osrecher (“Osrecher”), and the Spartanburg County Detention Center (“SCDC”). ECF No. 1. In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., this matter was referred to United States Magistrate Judge Thomas E. Rogers, III for pretrial handling. The Magistrate Judge reviewed the complaint pursuant to the provisions of 28 U.S.C. §§ 1915, 1915A, and the Prison Litigation Reform Act. On April 20, 2012, the Magistrate Judge issued a Report and Recommendation in which he recommended that Plaintiff’s claims be summarily dismissed. ECF No. 11.

On April 30, 2012, Plaintiff filed a document docketed as “objections” to the Magistrate Judge’s Report and Recommendation, which document asserts additional factual allegations in support of Plaintiff’s original complaint. ECF No. 16. On September 20, 2012, Plaintiff filed a document docketed as “Additional Attachments” to his objections, which document further

asserts factual allegations. ECF No. 26. On November 26, 2012, Plaintiff filed a motion to amend his complaint to include Sheriff Chuck White (“White”) as a Defendant. ECF No. 29.

### **I. FACTS**

The following facts are according to Plaintiff’s complaint. Plaintiff arrived at SCDC with an injury. ECF No. 1 at 4. Due to his injury, Plaintiff requested that he not be placed in an upstairs cell. *Id.* Plaintiff’s request was denied. *Id.* On January 25, 2012, Plaintiff fell down a flight of stairs at SCDC. *Id.* Thereafter, Plaintiff was transported to a hospital. *Id.* As a result of his injuries, Plaintiff has complained of pain and continues to experience numbness in his head and legs. *Id.* at 3. Plaintiff is not receiving treatment. *Id.*

### **II. STANDARD OF REVIEW**

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. *Mathews v. Weber*, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of any portions of the report and recommendation to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

Pro se complaints are held to a less stringent standard than those drafted by attorneys, *Gordon v. Leeke*, 574 F.2d 1147, 1151 (4th Cir. 1978), and a federal district court is charged with liberally construing a complaint filed by a pro se litigant to allow the development of a potentially meritorious case. *See Hughes v. Rowe*, 449 U.S. 5, 9 (1980).

### III. DISCUSSION

The Magistrate Judge reviewed Plaintiff's complaint and recommended that the claims against Blackwell and Osrecher be dismissed because Plaintiff failed to assert any allegations against them. ECF No. 11 at 4. Construing Plaintiff's suit as brought under 42 U.S.C. § 1983, the Magistrate Judge also recommended dismissing the claims against SCDC on the grounds that a detention center is not a person amenable to suit under § 1983. *Id.* at 3 & 4 (citing *Nelson v. Lexington County Det. Ctr.*, C/A No. 8:10-2988-JMC, 2011 WL 2066551 (D.S.C. May 26, 2011), and *Brooks v. Pembroke City Jail*, 722 F. Supp. 1294, 1301 (E.D.N.C. 1989).

Because Plaintiff's objections, and the attachments filed thereto, assert additional factual allegations, instead of identifying specific errors in the Magistrate Judge's findings, the court is not required to conduct a de novo review of the Report and Recommendation. *See Mathews v. Weber*, 423 U.S. 261, 270 (1976). Nevertheless, after carefully reviewing the record, the court agrees with the Magistrate Judge's findings that Plaintiff's claim against SCDC should be summarily dismissed.

However, the court declines to adopt the Magistrate Judge's recommendation that Plaintiff's claims against Blackwell and Osrecher be summarily dismissed. Applying the requisite liberal standard to Plaintiff's objections and attachments thereto, the court construes these filing as comprising a motion pursuant to FED. R. CIV. P. 15(a)(1) to amend his complaint with respect to the allegations against Blackwell and Osrecher. In addition, before the court is Plaintiff's motion to amend his complaint to include Sheriff Chuck Wright as a Defendant. Because service of process has not yet been authorized, Plaintiff is entitled to amend his

complaint “once as a matter of course.” FED. R. CIV. P. 15(a)(1). Therefore, the court grants Plaintiff leave to file an amended complaint against Blackwell, Osrecher, and Wright.

#### **IV. CONCLUSION**

For the reasons above, the court accepts in part and rejects in part the Report and Recommendation of the Magistrate Judge. The court accepts the Magistrate Judge’s recommendation that the claims against SCDC be summarily dismissed. The court declines to follow the Magistrate Judge’s recommendation that Plaintiff’s complaint be summarily dismissed as to Blackwell and Osrecher. Plaintiff’s motion to amend his complaint to include Wright as a Defendant, ECF No. 29, is granted. Plaintiff is granted leave to file an amended complaint against Blackwell, Osrecher, and Wright. Any amended complaint must be filed within fifteen (15) days of the filing of this order. If Plaintiff does not file an amended complaint, this case will be dismissed without prejudice as to all Defendants.

**IT IS SO ORDERED.**

s/ Margaret B. Seymour  
Margaret B. Seymour  
Chief United States District Judge

Columbia, South Carolina  
December 19, 2012